# LOS ANGELES BAR BULLETIN

## *In This Issue*




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LOS ANGELES

# BAR BULLETIN

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VOL. 19 JANUARY, 1944 No. 5



## THE CONFIDENCE OF THE PUBLIC

Speaking at the January meeting of the Association the other day, the President of the American Bar Association quoted his distinguished fellow-townsman, George Wharton Pepper, as saying that ours is a great profession, whose members devote one-third of their time to public service, one-third to charity, and one-third to making a living. We need but consider the labors of our members during these wartime years to realize how much truth there is in this deliberate statement by a man who speaks from years of experience.

Under the able leadership of Wm. C. Mathes during the year just closed the Los Angeles Bar Association has taken a foremost position among the organized groups of this community in furtherance of the war effort and of the progress to our inevitable victory and ultimate peace. We do not know how much of his time our president has devoted to charity, but we do know that he has spent little time in earning a living and given much more than a third to public service and to the Bar. A review of the history of the Association as reflected in the pages of the BAR BULLETIN and in the public press during the year will disclose the tangible results of some of his labors for our profession, and for the public. The intangible resulfs of the year's undertakings are beyond measure.

Our next president, Harry J. McClean, comes to his new office with the confidence of his professional brethren. He will assume his duties next month with the knowledge that today, more than ever, the public has confidence in the lawyers of this county and elsewhere for leadership. We know that that confidence will increase during his term of office. P. McC.

## ON THE FIGHTING FRONT

With the addition of four names to the Roll of Honor in the past month the list now totals 302.

The names of those members to be added to the roll are as follows:

Sargent, Willis, Lt. Com., USNR
Way, Harold F., Pvt., USA
Weil, Martin J., Lt., USNR
Williams, Robert E., Ensign, USNR

## OFFICERS OF THE ASSOCIATION FOR 1944

The election just completed has elevated Harry J. McClean to the office of President of the Los Angeles Bar Association for 1944, succeeding Wm. C. Mathes. Alexander Macdonald has been elected Senior Vice President, and Alex W. Davis becomes the Junior Vice President.

The trustees who will serve with the new officers on the Board include Ewell D. Moore, Paul Nourse and J. Marion Wright, of the Los Angeles Bar; Paul E. Schwab, of Beverly Hills, and Glenn E. Whitney, of Glendale, whose terms expire next year, and Fred Aberle, Paul Fussell, Walter L. Nossaman, and Clyde Triplett, of the Los Angeles Bar, and Charles R. Stead, of the Pomona Valley Bar, who have just been elected for two year terms. The Board of Trustees will appoint a new member to fill the unexpired term of Alex Davis.

The new officers and trustees will take over the government of the Association at the regular meeting in February.

## NEWS OF THE SECTIONS

THE Section on Corporations held a meeting for January 18, 1944. This meeting was to have been held earlier but a conflict with the Round Table tax lecture program resulted in the selection of the later date. The meeting was devoted to the subject of Limited Partnerships. Material was presented by J. C. Macfarland, Herbert Smith and David Tannenbaum.

The Probate, Real Property and Trusts Section held a meeting on January 19, 1944. The chairman of the Section, Paul Vallée, and the Secretary, J. W. Mullin, Jr., also advise that the total registration in the Section is 140 members. Discussion at the meeting was "What Constitutes Community Property and How Is It Determined?" Formal papers were delivered by Prof. Wm. E. Burby, Gilbert E. Harris, Ralph W. Miller and Hon. Florence M. Bishoff.

## A WORD FROM THE PRESIDENT

AS the Nazis set about to subjugate the Polish Capital of Warsaw, "One hundred nineteen members of the Warsaw Bar Association were thrown into jail, including the association's 80-year-old president." To be thus singled out was a striking tribute—albeit a bitter one—to the influence of that bar association in keeping alive the Democratic ideal.

When the conquerors came, the organized bar of Warsaw must have been a powerful factor in the life of that community. It must have been a working bar.

Stimulated by the spirit of wartime, our own Los Angeles Bar Association is rapidly becoming a working bar. Working to improve existing methods of judicial administration in all of our courts. Working to assure the poor the same justice as those who find themselves in more favorable financial circumstances. Working to improve existing methods of judicial selection and the security of judicial tenure. Working to enlarge the capacity of all members of our profession—both bench and bar—to give competent administration of justice under law.

To be strong, the Bar Association must be active in the service of its members. For as the Association serves the true interests of the profession, it will unerringly serve the public interest as well.

I think the most important direct and individual service our Bar Association can render its members during these times is to provide opportunity and encouragement for continual education and self-improvement, so as to enable each member to equip himself to be the kind of legal workman which the perplexing problems of the practice of the law demand.

In this work, we should always keep in mind the century-old appraisal of our brother Sir Walter Scott:

> "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

Another service of paramount importance which a working bar should render its members is to encourage the large intermediate income group of people to turn to the legal profession for competent legal advice and service. Our profession today serves largely two groups: (1) the indigent, and (2) those with

more than average means. There is ample evidence that the vast majority, people of small means, avoid a law office largely because they fear the unknown cost of the advice of a lawyer.

Perhaps there is still too much truth in the 19th century saying: "A lawyer starts life giving $500 worth of law for $5, and ends giving $5 worth for $500." But the significant fact is that, in Los Angeles County, at least, the services of a competent lawyer are within the financial reach of every person of small means. The bar is fast learning that to serve all the people means adjustment of time and fee schedules to a large volume basis.

Our Bar Association, through group advertising of the Lawyers Reference Service, is endeavoring to tell the people of this community:

(a) Why legal problems should always be taken to lawyers;
(b) That lawyers are better qualified than laymen, both by training and experience, to deal with legal problems, and thus protect valuable rights and interests of the lay public;
(c) That the cost of consulting a lawyer at the outset, immediately a legal problem arises, is comparatively negligible; and
(d) That the bar in general always stands ready to render legal service to all persons for fees in keeping with their incomes; just as lawyers render legal aid to indigent persons without any charge whatever.

Today—and for more than a decade past—our profession views with alarm and decries principally two things: (1) The inroads of administrative agencies upon the province of the judge; and (2) the inroads of various lay services upon the province of the practitioner.

It must be apparent by now that inroads upon the historical and deserved prerogatives of the courts will cease when—and only when—methods of judicial administration and procedure are modernized and made simple and efficient and competent enough to satisfy today's demands for judicial service in the prompt adjudication of conflicting claims.

And it is equally apparent that inroads upon the historical and deserved prerogatives of the bar will cease when—and only

when—we improve our facilities and methods and demonstrate that we are not only qualified, technically, but also prepared from the standpoint of thoroughness and promptness to render a better service.

Here are, indeed, some all-consuming tasks to challenge the ingenuity and the energy of all the members of a well organized, working bar. These are problems for local bar associations—for our Bar Association.

Let those who would leave them to the State Bar or the American Bar Association remember that the governing body of the national association meets only twice a year; that the governing body of the State Bar meets only once a month; while the Board of Trustees of our Association meets every week, and the members of our committees and sections can conveniently meet as frequently as need be. And let them remember as well that there can be no problem which affects the interest of the lawyers of this state, or the lawyers of this nation, that does not also affect and concern the welfare of the lawyers of Los Angeles County.

Wm. C. Mathes

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## LEGAL ASSISTANCE TO SERVICE MEN

As reported in the BAR BULLETIN for May, 1943 (p. 214), the Servicemen's Legal Aid Committee was established in 1940 to provide, within certain limitations, legal assistance to all persons in the military or naval forces of the United States and their dependents. It is gratifying to learn that the services rendered by the Association, not only through the Servicemen's Legal Aid Committee, but also through the facilities of the Lawyers' Reference Service, are of value to the naval personnel in this area. Such is the opinion of Capt. S. F. Heim, U.S.N., Commandant of the Naval Operating Base at Terminal Island, who says in a recent letter to the Association:

> The Los Angeles Bar Association is rendering practical legal assistance to Naval personnel and their dependents in the Los Angeles-Long Beach-San Pedro area in many ways.
>
> The Lawyers' Reference Service of the Association provides specialists to servicemen in every branch of the

law at fees commensurate with ability to pay; the Servicemen's Legal Aid Committee, under the chairmanship of Mr. Oscar Trippet, gives aid without charge on matters arising under the Soldiers' and Sailors' Civil Relief Act; and the Los Angeles Legal Aid Foundation grants free legal assistance of all kinds to Naval personnel or their dependents who are unable to pay fees.

Your President, Mr. William Mathes, has greatly assisted in establishing a Legal Assistance Office at this Base, by obtaining loan of essential law books from the Los Angeles County Law Library and from Mr. Hugo Harris of the Los Angeles Bar. Mr. Mathes gives constant attention to matters of coordination between the Legal Assistance Office and the organized Bar.

The members of the profession generally, and of your Association particularly, are affording every possible consideration to men of the Navy and their dependents in this area who require legal assistance or become involved in legal difficulties.

I wish to acknowledge these services rendered by the Los Angeles Bar Association and its members, and personally to thank the Association, its exemplary President, and your entire membership for the legal assistance provided for men and women of the Navy and their dependents by the lawyers of Los Angeles County.

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## CREDIT—

**Repertorial:** Keeping members of the Association advised of the activities of the Trustees, Committees, and Sections, is one of the main objectives of President Mathes. Consequently, a Repertorial Committee was set up, comprising some 15 younger members of the Bar, with Samuel Maidman as chairman. Each member of the committee is assigned certain sections or committees to cover, and to write stories of the action taken by such sections and committees for the press and for the BAR BULLETIN. The splendid cooperation of the Daily Journal in printing these stories has kept the members of the Association abreast of the program of activities. Incidentally, these "reporters" have displayed unusual abilities in preparing their stories. This plan of "reporting" the Association's work, has attracted the attention of the State Bar, which has made inquiries about it. One more innovation to our credit.

# THE BILL OF RIGHTS

By Pierson M. Hall, of the Los Angeles Bar,
United States District Judge*

IT IS a familiar rule of statutory construction that when construing an act of congress the circumstances preceding and surrounding its passage may be examined to give meaning to the law. The "Climate of Opinion" as the Supreme Court recently called it, shall be examined.

This is a day of war. Its necessities press heavily upon us. It has created a multitude of laws, regulations and agencies. Many of these agencies urge with ardor and persistence that the "Climate of Opinion" of today—the necessities of war—require almost imperative obedience to their regulations and approval of their acts and conduct.

To assist us in measuring those regulations and acts against the Constitution and Bill of Rights it may be helpful to examine the dangers, necessities, anxieties, and fears and problems—the "Climate of Opinion"—at the time of the proposal and adoption of the Bill of Rights.

To do this it is necessary to see the country at the conclusion of the revolution. I do not mean that the antecedent events had nothing to do with the creation of the Bill of Rights. But what we are concerned with now is the state of mind of the peoples of the thirteen colonies when the bill of rights was proposed.

## Revolutionary Conditions

Beginning then, at the end of the Revolution, we find New York occupied by an army of 30,000, equivalent to or in excess of the entire civil population, and most of the sea-coast towns of the United States occupied by the enemy—much in the same fashion that Japan now occupies the seacoast towns of China: The enemy had engaged in indiscriminate plundering — sacking and burning many of the seacoast villages and countryside from Maine to the Carolinas. Crops, animals and food supplies had been confiscated or destroyed. The whole coastal region of South Carolina had been burned. They had fought a war not against a distant enemy—but against an invader. An invader with a large segment of public sentiment — the 5th columnist of that

*This brilliant address was delivered by Judge Hall at the meeting of the Association December 15, 1943.

day—supporting and assisting him. In New York alone, the British recruited an army of almost 25,000.

Only 15 men remained to transact the business of the Continental Congress which had issued almost half a billion dollars in paper currency, and none of it was any good. The Continental armies had returned to their homes penniless, and ragged, to be faced with debt and ridicule.

**Washington Was "Broke"**

Between the time of the conclusion of the Revolution and the meeting of the first congress in March, 1789 in New York city, the situation had not improved. In fact it had got worse. *Washington,* reputed to be one of the richest men in the country, had to borrow 600 pounds for the journey to New York to assume the office of President. Shay's rebellion had found its genesis in the effort to prevent the courts from sitting, in order that no judgments for debt might be rendered. There were only three banks functioning in the country, and their paper was of limited and local circulation. Each of the States were confronted with large unfunded debts. The Union operating under the articles of confederation, not only had no credit, but the paper money issued was of less than no value. Credit was exchanged between New York and Philadelphia by way of London, the only coinage was the copper cent. There were no industries; no public or private financing to encourage the ambitious or the hopeful. Commerce was at a standstill. There was no mining—no massive steel or iron or aluminum, or magnesium or coal or automobile or oil or chemical industries.

**Government Unarmed**

The government was without arms or munitions; and there were no factories to make them. The Army had diminished to a total of 672 officers and men and there was no Navy. Europe with its armies, its population and its resources, stood within less travel time from New York than from New York to Richmond, and was a greater constant threat by virtue of this disparity of wealth and power than it could possibly be today. London was a city of 30 times the size of New York, which then had a population of 30,000, about the size of Southgate. There were only six cities in the country in excess of 8,000 population—Philadelphia, the Metropolis with 45,000 followed in turn

by New York, Boston, Charleston, Baltimore and Salem. Europe not only had no confidence in or enthusiasm for the new government, but with Florida and the Mississippi Valley possessed by Spain, the countries of Europe were encouraging the depredations of hordes of Indians against the colonies.

There was no money in the federal treasury, and if there had been any taxes, there was no machinery for collecting them. There was no judiciary, no court system, and no means for enforcing a federal law.

**No U. S. Employees**

Almost every other new government in history, whether started as a result of a revolution or conquest, has had the advantages of calling on professional functionaries and clerks to administer the government. But here there were none. There was probably a total of a dozen government employees but they had not been paid and there was no money to pay them. North Carolina and Rhode Island had not ratified the Constitution. Vermont had been treating with London for recognition as an independent State. A secession movement was gaining headway in the West. The President of Congress sounded out Prince Henry of Prussia whether he would accept an American throne.

There was no backing of any organized opinion; there was no method for quick dissemination of government policy; there were no conferences, no front porch speeches, no radios, no commentators, no fireside chats. There were no skilled persons to call upon to help in administering the government.

**No Precedents**

There was no tradition, and no precedent to guide or warn them. In searching history for examples to support the arguments in favor of the Constitution the authors of the Federalist were compelled to reach back 2,000 years to the Achean League and Lycean Confederacy, Greek Democracies, for any comparable government structure from which to draw examples.

Most of the States had adopted their constitutions. They were jealous of their prerogatives as newly created nations. Upon inquiry, a person would not respond that he was a citizen of the United States, but would reply that he was a citizen of Pennsylvania, of New York, or Massachusetts, etc. Threats of armed conflict were brewing, especially over the vast areas of new land

which lay to the west. There was no authority to carry out treaties that had been made with England and France. Generally, there was disorder, confusion, debt, despair and lawlessness.

**Dismal Picture**

In tribute to the dismal picture, Washington, no stranger to despair and hardship, setting out from Mt. Vernon in April, 1789, wrote:

> "My movements to the chair of government will be accompanied by feelings not unlike those of a culprit, who is going to the place of his execution; so unwilling am I, in the evening of life nearly consumed in public cares, to quit a peaceful abode for an ocean of difficulties, without that competency of political skill, abilities, and inclination, which are necessary to manage the helm. I am sensible that I am embarking the voice of the people, and a good name of my own, on this voyage; but what returns will be made for them, heaven alone can foretell. Integrity and firmness are all I can promise. These, be the voyage long or short, shall never forsake me, although I may be deserted by all men."

**Needs of a Nation**

All this setting testifies to the necessity for a central government with power; the need for authority to make these incipient thirteen nations into one nation, the need for a national army; the need to establish themselves among the scorning nations of the earth, with an international credit; to regulate commerce as it concerned more States than one. As Hamilton put it, a central government of power was "essential to the security of the people of America against foreign danger; essential to their security against contentions and wars among the differen States; essential to guard them against those violent and oppressive factions which embitter the blessings of liberty, and against those military establishments which must gradually poison its very foundation: In a word, essential to the happiness of the people of America."

**Bill of Rights Is Born**

Without such power there could be no union, but in the face of that overwhelming necessity for power, and undismayed by the danger of delay, following the lead of Massachusetts and Virginia, Congress on the 25th day of September, 1789, four days before the close of its first session, when there was still

no money in the treasury, and no scheme or means devised for creating any national credit, nevertheless made their choice and proposed to the various States the resolution containing 12 amendments, the last 10 of which were approved by the States and have become our Bill of Rights.

In the previous 25 years there had been great and important movements and events in American history. But certainly none that exceeded in influence upon mankind, the act of Congress in proposing and of the States on adopting the Bill of Rights; thereby Congress and the people chose to place principle above power as a fundamental precept: If being free instead of being secure meant war—they chose to be free; they were not afraid of war; they knew that hate and force and fear and ignorance are the inevitable handmaidens of tyranny and that to serve liberty there must be guarantees in that basic code that as between the individual and his government, there must mutually be love—decent respect—instead of hate, faith instead of fear, reason instead of force and truth instead of ignorance.

## Great Truths Defy Definition

I have lately seen and read many expressions endeavoring to define liberty: to describe freedom. But somehow or another, as I read these statements, they seem inadequate. I have wondered why. It is because the deepest truths for the most part, refuse to be written, and the dearest things defy definition. Thus it is with liberty and freedom. The scope and sweep of their spiritual inward sense of equality and uplift cannot be compressed into the concepts of any one mind, however great, or be catalogued and listed by the words of any one person's vocabulary, however learned. The settings and surroundings and circumstances of each individual, or nation, or people, whose liberty is concerned, change, not only from one generation to another, but with the trappings of modern civilization from year to year, and now, almost from day to day. To categorize or recite and name all the rights which make up our liberty and freedom, it would be necessary to comprehend the consummate experience of mankind and to possess withal that fluency of tongue which would touch universal understanding; to feel the physical pains of all of freedom's martyrs, and know the travail of spirit of the bewildered millions who have died with naught but a vain hope of

freedom; to know the history of all religion and all government and the original of all races and their customs and appetites. Because all these things enter into a complete understanding of liberty.

**Individual Concept**

Such is the nature of liberty that it means something different to each person at different times and under different circumstances.

The entire scheme of government in our Constitution permits a constant testing of the liberties of the individual. Its whole system and all its declarations in the Bill of Rights are based on the concept that the world belongs to living; that there is and shall be preserved the right to repeal or change any law, even the Constitution, if in reason, after free discussion it cannot win conviction in the minds of each new generation.

It is the virtue of our fundamental law that it is worded in generalities and leaves to each individual the privilege of asserting his rights from day to day, and provides a forum—a public forum—for their determination under rules of reason, each of which in turn is being tested again and again every day in the crucible of the courts.

**Cement of Constitution**

Thus the Bill of Rights is not only the guarantee of individual liberties, but it is the strength, the cement of the Constitution itself. Who cares to predict we would have a democratic form of government today if we had had no Bill of Rights—no due process—search and seizure—jury trial—religious liberty or free speech clauses to restrain for 154 years the appetite which power in government always creates for more power.

John Marshall said our Constitution is a document intended to endure for ages and to meet all the crisis of human affairs. Thus in the Constitution we find the Bill of Rights set out in the Broadest and most general language.

I have here a book, entitled "Gateway to Citizenship." There is impressed on the front the great seal of the Department of Justice. It was printed in the government printing office, in the city of Washington, District of Columbia, 1943, under the auspices of the United States Department of Justice. It is said that its purpose is to assist the members of the bench and bar,

the staff of the immigration and naturalization service, and other interested workers in their efforts to dignify and emphasize the significance of citizenship. In the fly leaf is the "Excerpt from Message to the Congress, January 6, 1941" the title of which is "The Four Freedoms." But I have failed to find any single quotation from the Constitution of the United States or the Bill of Rights. There are many excerpts from speeches and quotations from codes and articles as to what America means, what the States are, natural heritage, creeds, codes, oaths, pledges, charters, many of them are beautiful and inspired, but none approaching in fundamental depth of understanding or comprehensive strength of declaration the majestice cadences of the Bill of Rights.

**Text of Bill of Rights**

It would be a poor tribute, indeed, to the Bill of Rights, if at a meeting of lawyers, we did not read the text:

> "I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
>
> II. A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.
>
> III. No soldier shall, in time of Peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.
>
> IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,

nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

And in recognition of their own inability to comprehend all circumstances where liberty might be challenged, they provided by IX and by X:

"IX. The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

"X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the State respectively, or to the people."

There are 28 freedoms mentioned there. We have abanboned none of them. These were some of the inalienable rights which the Declaration of Independence asserts belong to each of us as necessary to secure our life, our liberty, our equality, and our pursuit of happiness. If the Ten Commandments provide a standard of conduct for a virtuous individual—then the 10 amendments which make our Bill of Rights are the ten commandments for a virtuous government.

With these 28 freedoms it necessarily results that there shall be the survival of the fittest idea and not merely the survival of the strongest or most scheming men. It is implicit in the philosophies of all absolutisms that they are afraid of democracy because they suppress the right to speak of it or discuss it freely.

We on the other hand, with freedom of thought, and freedom of speech have no fear of the consequences of a comparison by a free mind of our democracy with any form of government. By freedom of speech all ideas must stand trial in the court of public opinion.

Is it not reasonable that the founding fathers, who incidentally were historians, conscious of the indolence which is incipient in every happy people, conceived that freedom of speech, for instance, would compel us to constantly examine and re-examine our own government and rights as a result of listening to the arguments on behalf of other systems?

**Mental Irritants**

We have not been lacking for such mental irritants. For the past 20 years, with a noticeable increase in the last three, there have been many who, without even a healthy sniff of life as it is really lived in America in an air of cosmic profundity and with a spirit of frustration and envy, have ridiculed and abused as rabbits, or brigands, or yokels all those who really built America. They have cried that with no more free land the "uncultured" people of America have lost their capacity to be free and to govern themselves. Well, they are simply unacquainted with the American scene—they have been untouched by the spirit and will, not only of the American pioneer, but of the Sergeant Yorks, the Colin Kellys, the Butch O'Hares, the Henry Fords and Donald Nelsons of America. Perhaps these critical "Intelligentsia" are the product of one of 82 per cent of the institutions of so-called "Higher Learning" which have not decently required the study of U. S. history for the undergraduate degree.

**Pioneer Courage and Vision**

Looking then at the Bill of Rights in its "Climate of Opinion" written, declared, and adopted by the men who had not only fought an 8 years war, but who had afterwards undergone six years of misery, confusion, failure, debt, disappointment and hardship we see their keen knowledge of the necessity for a central government of power; we realize that they placed a premium on character and not on cunning; we grasp the fact of their consummate courage which it took in the face of the whole dismal picture to nevertheless declare the supremacy

of the rights of man. I wonder if we shouldn't feel just a little bit ashamed today that some of us now and then think it necessary to suspend these rights in order to exercise the power of national government whether to win a war, or otherwise. Is it not a confession of indolence that while standing in the midst of the unbelievable physical might of this nation there should be some who believe that we cannot fight this war without destroying the very things we fight to preserve?

There should be none among us who lack the ability to perceive that among the world's systems of government ours is still the "Best Hope of Mankind" as Jefferson and Webster and Lincoln said it was.

**Must Guard "Bill"**

To you as lawyers, now falls the resolve that the Bill of Rights shall not be destroyed by either direct attack or by blissfully ignoring it, or disdainfully by-passing it.

In the face of the magnificent boldness of those men who wrote into our fundamental law these rights of man as a standing challenge to all other philosophies of government which would deny them, should we not cast out the slightest apprehension about meeting any foe, at the same time preserving among ourselves those fundamental principles so that mankind can continue to walk the earth upright and unashamed and in the image of his Creator.

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## LATEST JUDICIAL APPOINTEE

John J. ("Jack") Ford assumed his duties as the newest Judge of the Los Angeles Municipal Court on January 3, 1944, after taking the oath of office before a large gathering of the bench and bar.

Judge Ford, who is 36 years of age, was born in Los Angeles, After obtaining his A.B. at Stanford University, he took his degree in law at Harvard Law School, graduating cum laude in 1931. He was a member of the board of editors of the Harvard Law Review for two years.

He entered private practice in Los Angeles with his father, the late W. Joseph Ford, in October, 1931, and continued until April, 1942, when he became Chief Enforcement Attorney at Los Angeles for the OPA. He remained in this position until his appointment to the Municipal Bench. In addition to his work

as a practicing attorney, he was an instructor in law at the Loyola School of Law, Los Angeles, for some eight years, and many of the younger members of the local bar have studied under him.

Judge Ford is well known in Los Angeles Bar Association circles, and has been active in other organizations.

## JANUARY MEETING

On January 19 the members of the Association met to do honor to the attorneys recently admitted to practice law in this State, and to hear the address of Hon. Jos. W. Henderson, President of the American Bar Association. In accordance with tradition the Chairman of the Junior Barristers, Homer Bell, introduced and welcomed the new members of the Bar and urged them to take an active part in the Association.

At the outset of his address the President of the American Bar Association described the work of the lawyers of the country in rendering assistance to the men and women in our armed forces, and spoke of the appointment of Legal Assistance Officers wherever our forces are stationed, in cooperation with officials of the War and Navy Departments. Quoting George Wharton Pepper, a distinguished leader of the Philadelphia Bar, Mr. Henderson said that this activity of the members of the Bar was typical of the great profession to which we belong, a profession which devotes one-third of its time to public service, one-third to charity, and the remaining third to making a living.

Turning to the tasks which lie before us, Mr. Henderson called on the Bar to hold the lead already taken to protect the civil rights and liberties of the citizens of this nation now imperiled by the ever-rising tide of administrative absolutism. "It is time," he said, "to be alarmed. Perhaps we may be satisfied with existing conditions; perhaps not. In any event we should know what we are doing and decide whether we are willing to accept this new form of government in the future." Expressing the belief that we must return soon to our constitutional form of government with the checks and balances created by the authors of the Constitution, Mr. Henderson urged the Bar to continue its public leadership, reminding his audience, in conclusion, that as bureaucracy grows, the administration of justice is thwarted, and that in due course the legal profession will disappear.

# MEMORIAL TO ROY VALENTINE REPPY

## 1878-1943

At the funeral of Roy V. Reppy on December 13, 1943, the only eulogy was the reading of the Fifteenth Psalm:

> *"Lord, who shall dwell in Thy tabernacle; or who shall rest upon Thy holy hill? Even he that leadeth an incorrupt life; and doeth the thing which is right, and speaketh the truth from his heart.*
>
> *"He that has used no deceit in his tongue, nor done evil to his neighbour; and hath not slandered his neighbour; he that setteth not by himself, but is lowly in his own eyes; and maketh much of them that fear the Lord.*
>
> *"He that sweareth unto his neighbour, and disappointeth him not; though it were to his own hindrance; he that hath not given his money upon usury; nor taken reward against the innocent.*
>
> *"Whoso doeth these things shall never fall."*

To those who knew him, the foregoing is a true picture of Roy Valentine Reppy. He led "an incorrupt life." He did the "things which are right," he spoke the "truth from his heart." Deceit was wholly foreign to his thought and conduct. It was hard for him to think evil of any man and slander of his neighbour was impossible for him. He was modest and self-effacing, not given to self-laudation—though his talents were large and varied, he was "lowly in his own eyes." He was faithful to his friends even "to his own hindrance" and no person in distress ever came to him for advice and counsel who did not go away convinced that here was a man who not only had never "taken reward against the innocent" but who gave himself unstintingly to aid those who were unfortunate.

His capacity for friendships was broad and deep—whether they were men of low degree or high estate. He liked them all provided only that he felt they were sincere. His charitable patience with the views of those with whom he was not in agreement was most unusual. One always felt that he respected a

sincerely expressed viewpoint even where he differed widely from the person expressing it.

Roy Valentine Reppy was born in Minnesota about sixty-five years ago, graduated from Stanford University in 1902, and from Harvard Law School in 1905. He married Agnes Lawton Arneill in 1909, and their lovely home life with their two children was beautiful to look upon.

Mr. Reppy was a splendid citizen, an honest and courageous man, who throughout his life possessed the confidence of his community. As a friend he was loyal and affectionate, and as a scholar he had a remarkably clear, calm and well ordered mind.

In his private practice, and as Assistant County Counsel of Los Angeles from 1914 to 1917, he demonstrated, by universal consent, that he was a sound lawyer and a master of the techniques of his profession. "He knew that the business of a lawyer is to know the law." To our Bar Association he gave freely of his talents and time, serving on important committees, and as a Trustee and officer for several terms.

As Vice President and General Counsel of the Southern California Edison Company Ltd. for over twenty years, Mr. Reppy made a lasting name for himself as a jurist, giving his company before the courts, tribunals and regulatory bodies throughout the nation, a matchless reputation for trustworthiness. "I have always thought," Mr. Justice Holmes wrote, "that not place or power or popularity makes the success that one desires, but the trembling hope that one has come near to an ideal." Surely Mr. Reppy fulfilled that hope.

His death, after a long illness, occurred at Los Angeles on December 10, 1943.

> "His life was gentle, the elements
> So mixed in him, that nature might stand up
> And say to all the world, 'This was a man.'"

Now, therefore, be it resolved that the Board of Trustees of the Los Angeles Bar Association does hereby adopt the sentiments herein set forth in memory of Roy Valentine Reppy, and as an expression of our high regard and affection for him, our sorrow at his passing, and our sympathy for his devoted family; and

Be it further resolved, that these resolutions be spread upon our Minutes, published in the BAR BULLETIN, and that a copy hereof be sent to the family of said Roy Valentine Reppy.

BEN F. WOODARD,
*Chairman.*
EDWARD D. LYMAN,
GURNEY E. NEWLIN.

## BY THE BOARD

FOLLOWING a request by the Section on Torts, Persons and Domestic Relations, the Board of Trustees adopted a resolution urging the Judges of the Los Angeles Superior Court to act at the earliest date practicable to relieve the court calendar in the Domestic Relations Department of the Court. After a meeting of the judges, Judge Stanley Mosk was assigned to aid in the handling of Domestic Relations cases.

The report of the Committee on Lawyers in Public Employ was received; and the Board of Trustees requested the Committee to discuss possible American Bar Association's support of appropriate Federal legislation with Chairman Guy Richards Crump of the Committee on Coordination with the American Bar Association. The Committee was also requested to endeavor to induce other offices of the State of California, wherever possible, to adopt a policy similar to that of the Attorney General's office—forbidding private practice of law by attorneys in their employ.

The report of the Committee on Post War Planning was received; and the Board of Trustees suggested further investigation of methods of assisting returning lawyers to re-establish themselves in independent, private practice; refresher courses for servicemen; ways of meeting the claim of the returning law student to complete his law school training or be admitted to practice; specific projects to which lawyers could immediately devote their efforts during the transition to peace time endeavors; and means of broadening the fields of service available to men trained in the law.

A special Committee to Aid Public Defenders was authorized so that its members might serve, by court appointment, as counsel for indigent defendants in misdemeanor cases, and as counsel for indigent accused upon preliminary examination in felony cases, in the various municipal, township and other magistrate courts throughout Los Angeles County, wherever there exists no provision for public defender representation in such cases. The Committee will also cooperate with the Public Defender of Los Angeles County, the Public Defender of the City of Los Angeles, and similar committees in other associations and agencies.

A special committee was appointed to assist the United States District Court for the Southern District of California in the revision of the rules of the District Court.

# PROFESSIONAL ETHICS

## OPINIONS OF COMMITTEE

THE very existence of committees on professional ethics is indicative of the fact that there is no end to questions involving the professional propriety of an attorney's conduct. The Committee on Legal Ethics of this Association is constantly called upon to answer such questions. Two recent opinions of our Committee are published herewith for the information of the Bar.

### OPINION NO. 146

*(November 4, 1943)*

**ATTORNEY AND CLIENT. Signing client's letters as company attorney not improper.**

The Committee is asked to pass upon the following: An attorney has an independent law practice. He represents and acts as attorney for an industrial manufacturing company which has considerable dealings with various government agencies. His services, in regard to such dealings, are partially executive in character, and he carries on directly and makes decisions regarding such

matters before the agencies. He asks whether it is proper, in communications to such agencies, to sign letters on the company's letterhead using the following example form: "ABC Manufacturing Co., John Doe, Company Attorney."

Such practice is perfectly proper. It violates no canon of professional ethics, and is in accord with the well-established practice whereby companies and business enterprises communicate with interested parties through their designated counsel.

This opinion, like all opinions of this Committee, is advisory only. (By-laws, Art. VIII, §3.)

COMMITTEE ON LEGAL ETHICS
By EDWIN W. TAYLOR, Chairman.

## OPINION NO. 147

*(November 4, 1943)*

**ADVERTISING AND SOLICITATION. It is unethical for an attorney who takes part in a commercial radio broadcast to permit his name to be announced.**

**RADIO BROADCASTS. It is improper for an attorney to take part in the broadcast of a simulated judicial proceeding which has as its purpose entertainment.**

A broadcasting company has submitted an outline of a proposed radio program, and has asked the Committee to state whether or not it would be unethical for attorneys to be actors in it.

The following is an outline of the proposed "show." A "fictional crime" is to be "enacted by a cast." One of the actors is to be "apprehended and booked for trial." The trial is to be conducted by two members of the bar, who "are to be paid a fee for their services . . ., the winning attorney to receive a larger fee." It has not been decided whether the same two attorneys will be used as "permanent members of the cast," or whether different attorneys will be used for each "crime." Permission is sought to use the names of the attorneys. Each attorney is to be "given the use of all characters in the fictional crime and given a week to prepare his case." A jury is to be selected from the audience. If "there should be a miscarriage of justice, one of several devices . . . [may be] used to protect the losing attorney from losing face. One device is for the judge to read the verdict and then deliver an opinion on the jury being so blind to the presentation of the facts as they were brought out in the

testimony." Other details are stated in the letter of inquiry; but, for present purposes, it is not necessary to consider them.

The submitted "outline of the show" mentions the judge; but it does not reveal whether the judge shall be a person who is subject to the Canons of Judicial Ethics or to the Canons of Professional Ethics.

The letter of inquiry does not state that the proposed programs will be broadcast as commercial advertising programs; but it seems safe to assume that their intended purpose is advertising and that commercial announcements will be made in connection with, and as a part of, the broadcasts. This assumption is supported by the fact that it is clear from the letter of inquiry that entertainment, and not education, is the purpose of the programs, and by the fact well known that radio time is expensive and not likely to be donated to broadcast a "show" of the kind described above.

At least two questions of ethics are presented. (1) If attorneys take part in a commercial radio broadcast, may they permit their names to be announced? (2) Is it improper for attorneys

to take part in the broadcast of a simulated judicial proceeding which has as its purpose entertainment?

The first question, which is narrower than the second, can be answered by application of the rules of ethics that regulate advertising and solicitation by attorneys. Both the Canons of Professional Ethics of the American Bar Association and the Rules of Professional Conduct of The State Bar contain specific provisions on the subject of advertising and solicitation. Canon 27 of the Canons of Professional Ethics, as amended August 27, 1942, provides, in part, and to the extent that it is pertinent, as follows:

> "It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment, such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; . . ."

Rule 2 of the Rules of Professional Conduct of The State Bar, as amended January 27, 1943, provides, to the extent that it is applicable, as follows:

> "A member of the State Bar shall not solicit professional employment by advertisement or otherwise."

Canon 27 has been given a narrow and strict interpretation by the Committee on Professional Ethics and Grievances of the American Bar Association. That committee has decided that it is unethical for an attorney to solicit employment by means of letters addressed to attorneys with whom he has had no previous relations (Opinion 1); that it is improper for an attorney, who is a director of a trust company, to allow his name to appear *as a director* in advertisements which offer the services of the trust company in preparing wills (Opinion 41); that an attorney is guilty of unprofessional conduct if he furnishes to newspapers and other publications pictures or material for special write-ups of divorce cases where he intends that his name shall be used in connection with the publication (Opinion 42); that it is improper for a lawyer to have his name printed in boldface type in the classified section of a telephone directory (Opinion 53). Other

examples could be cited; but no useful purpose would be accomplished by doing so. See, for example, Opinion 62 (laudatory news items containing references to an attorney), and Opinion 107 (newspaper Christmas greetings signed and paid for by an attorney).

This Committee has applied the quoted rules with strictness equal to that of the committee of the American Bar Association. Consult; for examples: Opinion 128 (mailing indiscriminately to members of the Bar announcements of the opening of a law office, the announcements containing more than is contained in an ordinary simple business card); Opinion 95 (distinctive listings in a telephone directory); Opinion 85 ("good will proclamations" or "Christmas greetings" by attorneys in newspapers).

The foregoing illustrations of what has been held to be unethical advertising and solicitation seem mild when compared with the proposed plan of the inquirer in this case. It is the opinion of this Committee that any attorney who permits his name to be used in connection with a radio program of the kind outlined in the letter of inquiry will be guilty of a serious breach of the rules of ethics relating to advertising and solicitation by members of the Bar.

The second question is not new. It was presented in a slightly different form to the Committee on Professional Ethics and Grievances of the American Bar Association, and answered by that Committee in its Opinion No. 166, dated November 15, 1936. The inquiry in that case was prompted by a radio program entitled "Good Will Court." The essential feature of the program was the appearance of annonymous "clients" who, with the as-

sistance of a person who may or may not have been an attorney, presented the facts of their "cases" to a judge. The judge, whose name was mentioned, gave advice to the "clients" and made comments on the "cases." The announced purpose of the program was to assist indigent persons in solving their legal problems. Commercial announcements were made in connection with the program. It is true that there are some differences between the facts just outlined and the facts of the present inquiry; but the principles stated, and the reasons given, by the American Bar Association committee are applicable to the present inquiry. Opinion 166, mentioned above, reads, in part, as follows:

> "At the outset we deprecate the simulation of an actual judicial proceeding by a group of lawyers or judges, and especially one having for its primary purpose the advertising of an article of commerce. It is an affront to the dignity of judicial tribunals and should not be tolerated. It is the unqualified opinion of this committee that no judge or former judge nor any other member of the Bar should participate in any such commercial program. 'Patience and gravity of bearing is an essential part of justice; and an overspeaking judge is no well-tuned cymbal.' Another vice of such programs is the tendency to give to the public a distorted idea of the way in which judicial proceedings should be conducted and of the judicial functions.
>
> "While the question here presented is of paramount importance, the answer is plain. The most important character in these programs is the judge. The judicial office circumscribes the personal conduct of the judge. Canon 1, Canons of Judicial Ethics. The personal behavior of the judge, 'not only upon the bench and in the performance of his judicial duties, but also in his everyday life, should be above reproach,' and he should not use 'the influence of his name to promote the business of others.' Canons 4, 25 and 34. The American Bar Association adopted these Canons in 1924, as a proper guide and reminder for judges, 'and as indicating what the people have a right to expect from them.'
>
> "The judge who participates in, or lends his name to, radio programs such as we are here considering obviously violates these Canons.
>
> "Moreover, the commercial character of the program, the absence of any opportunity to hear the other side of the case, and the patent exploitation of the intimate and distressing problems of the anonymous 'clients,' can only be viewed as an effort 'to change what should be the

most serious of human institutions either into an enterprise for the entertainment of the public or one of promoting publicity for the judge.' Opinion 67. Because of the divergence in the laws of the several states, the advice given by the judge is apt to be misleading to listeners in states other than in the state of origin. . . .

"In a large measure, the same injurious results follow even though the role of the court in such programs is assumed by one who is a former judge or an attorney. We are, therefore, of the opinion that it is not proper for an attorney or former judge to participate in such radio programs, nor permit the use of his name. The part he takes is calculated to lower the esteem of the profession, and to stir up legal strife, and may be considered a subtle method of seeking employment. Opinion 121. Our present economic structure justifies the maintenance by the organized bar of the modern legal aid clinic to aid the individual lawyer in the discharge of his obligation, but cannot justify its alleged counterpart in the commercial field of radio entertainment. . . ."

This Committee adopts the views of the American Bar Association committee expressed in the foregoing quotation.

It is the opinion of this Committee that the second question stated above must be answered in the affirmative.

This opinion, like all opinions of this Committee, is advisory only. (By-laws, Art. VIII, §3.)

COMMITTEE ON LEGAL ETHICS
By EDWIN W. TAYLOR, Chairman.

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## COOPERATION WITH LIFE UNDERWRITERS

TOO FEW members of the Bar are aware of the value to their clients of the services of life insurance underwriters in the creation and conservation of estates. That the importance of cooperating with attorneys is recognized by the life underwriters is evidenced by the report of the Committee on Cooperation with Attorneys to the recent meeting of the National Association of Life Underwriters. That Association also quite actively promotes friendly relations with trust officers. The report of its Committee on Cooperation with Attorneys, as it appeared in the October, 1943, issue of *Life Association News,* should be of interest to all members of the Association. What is said of the relations between Life Underwriters and trust officers is largely applicable to the relations between Life Underwriters and Attorneys as well.

### COOPERATION WITH ATTORNEYS

Your committee feels that the establishment of friendly and helpful relationship between life insurance underwriters and members of the bar associations is most important for the adequate creation and conservation of estates. Every possible step should be taken to create a better understanding between these two groups in every community.

It is our opinion, however, that cooperation between the two groups must come about by individual contact rather than through large meetings which are more or less impersonal. Until the attorneys acknowledge the importance and ability of the life underwriter, as the underwriter has long recognized the importance and ability of the attorney, no real progress can be made. Therefore, it is up to each and every underwriter in the country to act

as a committee of one to cultivate, educate and earn the good will of at least one attorney in his community. When this has been done, these attorneys will build good will for the underwriters in their respective bar associations.

The ever increasing interest in, and business which is resulting from, pension trusts now being written (in a great many instances under individual policy plans) requires the intervention of an attorney for the preparation of legal instruments for the proper installation of the pension trust; such as, the resolution of the board of directors, proxy statement, trust instrument, etc. The attorney can be of invaluable aid to the life underwriter, in fact without his sympathetic understanding and acceptance of the underwriter's ability and influence, it would be very difficult to successfully complete such a transaction. Recognizing, as we all do, that more and more of our premium dollars will come from corporation treasuries, this type of business is further proof of the necessity for better understanding between the life and legal groups.

In this mutual endeavor, the attorney can profit materially by being alert to his opportunities and, if he will study our plans and work with us for the good of our mutual clientele, he can secure a tremendous amount of profitable business.

The statement of Principles of Cooperation between Life Underwriters and Lawyers, worked out by George E. Lackey, C.L.U., chairman representing the National Association, and Edwin M. Otterbourg, chairman representing the American Bar Association, is splendid. We must, however, work for better understanding in our own communities with the obligations equally divided and without all the restrictions being placed on one group.

Underwriters exert a powerful influence in the building of estates and, with the attorneys, can do an outstanding job of estate conservation.

While travel restrictions made it impossible for your committee to do much outside of their own communities, your chairman, while appearing before some twenty associations on behalf of the N.A.L.U., brought this matter briefly to their attention. We firmly believe that when there is local cooperation between our groups throughout the country, the movement will automatically achieve national stature.

## STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACTS OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933

of Los Angeles Bar Bulletin, published monthly at Los Angeles, California, for October 1, 1943.

State of California, County of Los Angeles.—ss.

Before me ,a Notary Public in and for the state and county aforesaid, personally appeared Robert M. Parker, who, having been duly sworn according to law, deposes and says that he is the business manager of the Los Angeles Bar Bulletin, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—Los Angeles Bar Association, 458 S. Spring St., Los Angeles 13, Calif.

Editor—Philbrick McCoy, 1015 Spring Arcade Bldg., Los Angeles 13, California.
Managing Editor—None.

Business Manager—Robert M. Parker, 241 E. 4th St., Los Angeles 13, California.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.) William C. Mathes, President, 640 Rowan Bldg., Los Angeles 13, California. Alex W. Davis, Secretary, 514 Pacific Mutual Bldg., Los Angeles 14, California. Ewell D. Moore, Treasurer, 620 Subway Terminal Bldg., Los Angeles 13, California. Los Angeles Bar Association, 1124 Rowan Bldg., Los Angeles 13, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the twelve months preceeding the date shown above is..... (This information is required from daily publications only.)

ROBERT M. PARKER,
Business Manager.

Sworn to and subscribed before me this 7th day of October, 1943.

[Seal] H. L. ST. CLAIR,
*Notary Public in and for the County of Los Angeles, State of California.*

My commission expires March 12, 1947.

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